IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINAL JURISDICTION
Dated: Nainital the May 12, 2006
Criminal Bail Application No. 397 **of 2006**
Order on the bail application of accused

CRIMINAL SIDE

Rashid @ Peera S/o Sabban Khan @ Chhutwa Khan
R/o Chamrua P.S. Shahzad Nagar
District Rampur .....Applicant

Versus

State of Uttaranchal ....Opposite Party

Arising out of case crime No. 9063 of 2005
Under Sections 302 IPC and 2/3 Gangster Act
Police Station - Haldwani
District Nainital

Hon'ble B.C. Kandpal, J.

Heard Smt. Pushpa Joshi learned counsel for the applicant, learned A.G.A. for the State and perused the record.

It was contended on behalf of the applicant that the present applicant has been charged under sections 302 IPC & 2/3 Gangster Act. FIR shows that the Gangster Act has been charged against the applicant only on the ground that the single incident of murder was committed by the accused. It was further contended that the identification parade conducted by the prosecution shows that witnesses could not recognize the accused. It was further contended that on the basis of the statement recorded in the month of December 2005, the discovery under section 27 of the Evidence Act was made on 4.1.2006 from the bush near the intermediate collage. It was contended that the place where the discovery was made is easily accessible for so many persons. As such, the discovery cannot be relied upon. It was further contended that there is no allegation that the country-made pistol was concealed in such a way which could not be seen by any person. It was further contended that the statement of Pradeep Singh was recorded in the month of February 2006 in which he stated that he saw the countrymade pistol in the hands of the applicant. Pradeep Singh has not stated that he saw

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the applicant committing the murder of the deceased. It was contended that the chain of circumstantial evidence is not complete. Learned AGA contended that there are certain other cases pending against the applicant. But, the learned A.G.A. could not show me that the applicant-accused has been convicted in other cases pending against him. It is surprising that at the time of recording the FIR, such type of details have not been shown against the applicant. It would have been just and proper if the accused had been challaned under section 302 IPC in the first FIR and thereafter the prosecution on being satisfied that he had committed the offence under Gangster Act, a separate case should have been registered. The Gangster Act had been imposed without applying the mind by the competent authority. The case history which had been given in the counter affidavit should have been the part of the Gangchart of the FIR. As a matter of fact the Ganster Act being a Special Act the case should have registered separately and the crime of IPC should have been registered separately.

Considering the contentions of the parties, facts and totality of the circumstances of the case, it is a fit case for bail.

Let the applicant-accused be released on bail on executing a personal bond and two sureties each in the like amount to the satisfaction of the C.J.M. concerned.

(B.C. Kandpal, J.)

12.05.2006
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